

MASSACHUSETTS RULES OF CIVIL PROCEDURE

REPORTER'S NOTES

Rule 1. SCOPE OF RULES

Reporter's Notes--2008

The definition of "Municipal Court of the City of Boston" has been amended in light of legislation in 2003 transferring various Divisions of the District Court Department located in Suffolk County to the Boston Municipal Court. See G.L. c. 218, § 1 and G.L. c. 218, § 50.

Whenever the term "District Court" is used in the Massachusetts Rules of Civil Procedure, the reference is to be construed as including the Boston Municipal Court, unless "the context means something to the contrary." Mass. R. Civ. P. 1, sixth definition.

Reporter's Notes to Repealed Rule 1A, Transitional Rule for District Court Litigation in Progress on July 1, 1996

Reporter's Notes--2008

Rule 1A, entitled Transitional Rule for District Court Litigation in Progress on July 1, 1996, was repealed in 2008.

Rule 12. DEFENSES AND OBJECTIONS--WHEN AND HOW PRESENTED--BY PLEADING OR MOTION-- MOTION FOR JUDGMENT ON PLEADINGS

Reporter's Notes--2008

Rule 12(b) has been amended to add a new numbered defense, 12(b)(10). This defense permits a defendant to raise by motion to dismiss the issue whether the amount of damages that the plaintiff is reasonably likely to recover meets the requirements of G.L. c. 212, § 3 (Superior Court) or G.L. c. 218, § 19 (District Court and Boston Municipal Court). Under G.L. c. 212, § 3, an action may proceed in the Superior Court "only if there is no reasonable likelihood that recovery by the plaintiff will be less than or equal to \$25,000...." Under G.L. c. 218, § 19, an action may proceed in the District Court or Boston Municipal Court "only if there is no

reasonable likelihood that recovery by the plaintiff will exceed \$25,000....”

Before the addition of new Rule 12(b)(10), the issue whether the plaintiff met the statutory requirements regarding the \$25,000 amount was not included among the defenses enumerated in Rule 12(b), and presumably could be raised only in the answer. With this amendment, the issue may now also be raised by a motion to dismiss. In addition, Rule 12(h) has been amended to provide that failure to raise improper amount of damages in a motion to dismiss or answer constitutes a waiver.

Violation of the statutory requirements regarding the \$25,000 amount is procedural, not jurisdictional. G.L. c. 212, § 3A(b); G.L. c. 218, § 19A(b). See *Sperounes v. Farese*, 449 Mass. 800 (2007).

In *Sperounes*, the Court held that under the statewide one-trial system, a District Court judge *must* dismiss an action where an objection has been made and where there is a reasonable likelihood the plaintiff will recover more than \$25,000. However, where the defendant does not object, a District Court judge has the discretion to dismiss the action *sua sponte* or to permit it to proceed. *Sperounes v. Farese*, *supra* at 806-807.

Rule 13. COUNTERCLAIM AND CROSS-CLAIM

Reporter’s Notes--2008

Rule 13(j) (“Transferred, Appealed and Removed Actions”) has been deleted. It had been included in the original version of the Mass. R. Civ. P. because the Massachusetts Rules of Civil Procedure, when first promulgated, did not apply in the District Court.

Rule 38. JURY TRIAL OF RIGHT

Reporter’s Notes--2008

Rule 38(e), entitled “District Court,” has been deleted, now that jury trials are available in the District Court under the statewide one-trial system, applicable to civil actions commenced on or after August 31, 2004 (St. 2004, c. 252). Thus, the provisions of Rule 38 governing the right to jury trial, demand, specification, and waiver, are applicable in the District Court.

Rule 39. TRIAL BY JURY OR BY THE COURT

Reporter's Notes--2008

A new second sentence has been added to Rule 39(a) to deal with statutory requirements in the District Court regarding designating an action on the docket as a jury action. The statewide one-trial statute provides in G.L. c. 218, § 19B(a) as follows:

In any case in which a party has filed a timely demand for a jury trial, the action shall not be designated upon the docket as a jury action until after the completion of a pretrial conference, a hearing on the results of the conference and until the disposition of any pretrial discovery motion and compliance with any order of the court pursuant to the motions.

Rule 39(d), entitled "District Court," has been deleted, since jury trials are available under the statewide one-trial system in District Court civil actions. Thus, Rule 39, as amended by the addition of the above sentence to Rule 39(a), will be applicable in the District Court.

Rule 42. CONSOLIDATION: SEPARATE TRIALS

Reporter's Notes--2008

Rule 42(d) has been amended to add language that appears in Rule 42(b) regarding the constitutional right to trial by jury.

In light of the 2003 legislation transferring various divisions of the District Court Department located in Suffolk County to the Boston Municipal Court Department and with the creation of divisions in the Boston Municipal Court Department (G.L. c. 218, § 1 and G.L. c. 218, § 50), Rule 42(c) and Rule 42(d) are also applicable in the Boston Municipal Court Department.

Rule 47. JURORS

Reporter's Notes--2008

Rule 47 has been amended to add an additional section (c) dealing with six-person juries in the District Court. Rule 47(b) applies to all courts other than the District Court.

New Rule 47(c) provides for impanelling up to eight jurors. The statewide one-trial

statute provides that the number of peremptory challenges is two for each party. G.L. c. 218, § 19(B)(c).

Rule 48. NUMBER OF JURORS--MAJORITY VERDICT

Reporter's Notes--2008

The title of Rule 48 has been changed to "Number of Jurors--Majority Verdict" in light of the fact that there are six-person juries in the District Court. The language of Rule 48 has likewise been amended.

Rule 52. FINDINGS BY THE COURT

Reporter's Notes--2008

Rule 52 has been amended to require findings of fact and rulings of law in jury-waived cases in the District Court and Boston Municipal Court, but only if a party has submitted, before the beginning of any closing arguments, proposed findings and rulings. This differs from practice in the Superior Court under Rule 52(a), which requires Superior Court judges to make findings and rulings as a matter of course in jury-waived actions, whether or not a party has submitted proposed findings and rulings.

Requiring a party to submit proposed findings and rulings as a condition to the court's making findings and rulings is justified by the volume and nature of the civil caseload in the District Court and Boston Municipal Court. The rule also provides a party with the absolute right to a three-day period in which to submit supplemental proposed findings and rulings, as long as that party, before the beginning of any closing arguments, has filed proposed findings and rulings *and* has made a request to file supplemental proposed findings and rulings. The proposed findings and rulings and the request to file supplemental proposed findings and rulings may be contained in the same document.

The amendments to Rule 52(c) include a general description of the format and content of proposed findings and rulings by a provision that they be set forth concisely and in separately numbered paragraphs covering one subject for each request. In doing so, the rule intends to state a preferred, but not mandatory, format and content for proposed findings and rulings.

A judge in the District Court or Boston Municipal Court may make findings and rulings, *sua sponte*, even where doing so is not required by this rule.

Simultaneously with the amendments to Rule 52(c), Rule 64A, Requests for Rulings of Law in District Court, was repealed. The repeal of Rule 64A eliminates the “requests for rulings” procedure that had been in place in the District Court and Boston Municipal Court. Under that procedure, a party could obtain rulings of law from the court by filing requests for rulings of law prior to the beginning of any closing arguments. This prior procedure merely required the court to allow or deny a requested ruling of law, and did not require the court to make its own rulings of law. Under the prior procedure, there was no mechanism for a party to require findings of fact in District Court and Boston Municipal Court jury-waived actions. Under the amended language of Rule 52(c), a party now has the opportunity to require both findings of fact and rulings of law from the trial judge.

The repeal of Rule 64A also eliminates the provisions regarding “warrants” requests. These were requests that the evidence warrants a finding for the requesting party or does not warrant a finding for the opposing party.

The requirement of findings and rulings under Rule 52(c) applies to all District Court and Boston Municipal Court cases governed by the Massachusetts Rules of Civil Procedure, that is, “cases traditionally considered tort, contract, replevin, or equity actions, except small claims actions.” Rule 81(a)(2). No attempt has been made in the rule or in the Reporter’s Notes to list all of the types of District Court and Boston Municipal Court actions in which findings and rulings are not required. Supplementary process is one example where findings and rulings should not be required, since supplementary process is a statutory proceeding not falling within the ambit of cases that would be “traditionally considered tort, contract, replevin, or equity.”

Summary process, however, presents a different example and a different result. Although under the Massachusetts Rules of Civil Procedure, findings and rulings are not required in District Court and Boston Municipal Court summary process actions (because of the language in Rule 81(a)(2)), the application of Rule 1 of the Uniform Summary Process Rules would result in a requirement of findings and rulings in District Court and Boston Municipal Court summary process cases pursuant to the procedure set forth in Rule 52(c). Rule 1 of the Uniform Summary Process Rules adopts the Massachusetts Rules of Civil Procedure, “insofar as the latter are not inconsistent with” the Uniform Summary Process Rules. Thus, Uniform Summary Process Rule 1 would make amended Rule 52(c), with its requirement of findings and rulings in the District Court and Boston Municipal Court upon the filing of proposed findings and rulings, applicable to summary process cases in those courts. It should be noted that in summary process cases in the Superior Court and Housing Court, findings and rulings are required as a matter of course pursuant to Rule 52(a) (made applicable to summary process cases in those courts by virtue of Uniform Summary Process Rule 1).

Rule 55. DEFAULT

Reporter's Notes--2008

Prior to the 2008 amendments, there were different provisions regarding default for the Superior Court and District Court. In the Superior Court, the pre-2008 version of this rule authorized the clerk to enter a judgment by default in “sum certain” cases if the defendant had been defaulted for failure to appear; otherwise, the matter had to be presented to the court (Rule 55(b)(1) and (2)). In the District Court, the pre-2008 version of this rule authorized the clerk to enter a judgment by default in “sum certain” cases, regardless of whether the default had been based on defendant’s failure to appear (Rule 55(b)(3) and (4)). See Reporter’s Notes to the 1996 amendments to the Mass. R. Civ. P. (merging the District Court Rules into the Mass. R. Civ. P.).

The 2008 amendments to Rule 55 serve to eliminate the differing default provisions for the Superior Court and the District Court. The amended language adopts for the District Court the Superior Court version of Rule 55. Accordingly, Rule 55(b)(3) and (4), which had contained the District Court version, have been deleted. Also, Rule 55(b)(5) and (6) have been renumbered as Rule 55(b)(3) and (4).

In light of the above, the titles to subparagraphs (1) and (2) of Rule 55(b) have been changed to read “(1) By the Clerk” and “(2) By the Court.” In addition, the text of the pre-2008 version of subparagraph (5)--now renumbered as subparagraph (3)--has been amended to delete the reference to (b)(4).

Unrelated to the statewide one-trial system, the reference in renumbered Rule 55(b)(4) to the “Soldiers’ and Sailors’ Civil Relief Act” of 1940 has been deleted and replaced with the “Servicemembers Civil Relief Act.” Congress renamed the Act and updated the Act in 2003.

Reporter's Notes to Repealed Rule 64A, Requests for Rulings of Law in District Court

Reporter's Notes--2008

Rule 64A, entitled Requests for Rulings of Law in District Court, was repealed in 2008. For procedure to obtain findings of fact and rulings of law in jury-waived cases in the District Court and Boston Municipal Court, see Rule 52(c), as amended in 2008.

Rule 80. STENOGRAPHIC REPORT OR TRANSCRIPT

Reporter's Notes--2008

Rule 80(c), dealing with stenographic reports in the District Court, has been amended in light of the following language in the statewide one-trial law (see G.L. c. 218, § 19B(d)):

(d) The justice presiding at the jury of 6 session may, upon the request of a party, appoint a stenographer; provided, however, that where the party claims indigency, the appointment is determined to be reasonably necessary in accordance with chapter 261; and provided, further, that the court electronic recording system is not available or not properly functioning....The request for the appointment of a stenographer to preserve the testimony at a trial shall be given to the clerk of the court by a party, in writing, no later than 48 hours before the proceeding for which the stenographer has been requested....The original recording of proceedings in a district court or in the Boston municipal court made with a recording device under the exclusive control of the court shall be the official record of the proceedings....

Rule 81. APPLICABILITY OF RULES

Reporter's Notes--2008

Unrelated to the statewide one-trial system, the reference in item 10 of Rule 81(a)(1) is amended to delete the reference to the "Soldiers' and Sailors' Civil Relief Act," which was renamed as the "Servicemembers Civil Relief Act" and updated by Congress in 2003.